

TABLE OF CONTENTS

Executive Summary	i
I. The Commission Should Extend Complete Detariffing To International Components When Included in Negotiated, Customer-Specific Service Arrangements	2
II. The Commission Should Reject TRA's Permissive Detariffing Proposal	7
III. The Commission Should Clarify That Its Mandatory Detariffing Order Extends to the Local Access Components of the Services Provided by Interexchange Carriers	8
IV. The Commission's Forbearance Authority Is Not Substantively Disputed	9
V. Negotiated Services Arrangements Should Not Be Subject to the Public Disclosure Requirements	10
VI. The Commission Should Deny General Communication, Inc.'s Petition for Reconsideration or Clarification	11

EXECUTIVE SUMMARY

The Commission should extend its mandatory detariffing order to the international portion of service agreements containing both international and domestic components. Detariffing the international portion of such agreements will enable parties to enter into fully integrated customer-specific service agreements without having to tariff the international components thereof. As such, API opposes AT&T's suggestion that the Commission implement a nine-month permissive detariffing period for customer-specific service agreements containing both international and domestic components. API also opposes AT&T's alternative proposal requesting that the Commission provide a nine-month transition period that would allow carriers to file tariffs for the domestic portion of customer-specific service agreements containing both international and domestic components. Both of AT&T's requests represent a "step back" in the Commission's efforts to deregulate competitive segments of the telecommunications industry, and are not in the public interest. The most appropriate solution is to extend mandatory detariffing to international services, not to weaken the Commission's mandates by allowing permissive detariffing.

The Commission should clarify whether the local access components of negotiated services arrangements provided by interexchange carriers are subject to mandatory detariffing. If local access components are not subject to detariffing, API

supports Ad Hoc's request that the Commission reconsider its decision on this matter. API interprets the Commission's Order as a mandate to detariff the rates, terms and conditions of all interstate, domestic, interexchange services, unless specifically excluded. Additionally, there is no reason to retain the tariffing obligation for the local access components of negotiated services arrangements.

The Commission should adopt AD Hoc's proposal that the rates, terms and conditions for negotiated services agreements not be subject to the public disclosure obligation. Each of these agreements reflect unique circumstances and are specific to the needs of the parties involved. Moreover, these services should be treated differently because (1) the number of transactions is relatively limited as compared to "mass market" offerings, and (2) reliance on the competitive bidding process has been and remains widely followed in this market segment.

Finally, the Commission should reject GCI's contention that mandatory detariffing does not apply to AT&T/Alascom. In the Detariffing Order, the Commission held that it was not relieving AT&T of its commitments associated with the purchase of Alascom, and that AT&T/Alascom was subject to mandatory detariffing. GCI presents no reasoned justification for excluding AT&T/Alascom's interstate, domestic, interexchange service from mandatory detariffing. Without such, there is no reason for the Commission to reconsider its decision on this issue.

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Policy and Rules Concerning)	CC Docket No. 96-61
the Interstate, Interexchange)	
Marketplace)	
)	
Implementation of Section 254(g))	
of the Communications Act of 1934,)	
as amended)	

STATEMENT OF THE AMERICAN PETROLEUM INSTITUTE
IN OPPOSITION AND SUPPORT OF
PETITIONS FOR RECONSIDERATION

The American Petroleum Institute ("API"), by its attorneys, respectfully submits its Statement in Opposition and Support of Petitions for Reconsideration filed in the above-styled proceeding. API has been an active participant in this proceeding, filing Comments, Reply Comments, a Petition for Reconsideration and, most recently, an Opposition to MCI's Motion for Stay Pending Judicial Review. API strongly supports the Federal Communications Commission's ("Commission" or "FCC") complete detariffing

policy adopted in the Detariffing Order.¹ This Statement and API's Petition for Reconsideration are fully consistent with the Commission's underlying policy of promoting competition in competitive segments of the telecommunications industry through its informed judgement and by utilizing its expanded authority provided by the Telecommunications Act of 1996.

I. The Commission Should Extend Complete Detariffing To International Components When Included In Negotiated, Customer-Specific Service Arrangements.

A. The Commission Should Reject AT&T's Permissive Detariffing Proposal and AT&T's Alternative Request For The Nine-Month Transition Period.

API agrees with AT&T that both the domestic and international portions of customer specific telecommunications service arrangements should be subject to mandatory detariffing.² This conclusion is the basis of the Petition for Reconsideration filed by API. Not surprisingly, other users share the concern of API member companies.³ As AT&T explains, the bifurcation of domestic

¹ Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, FCC 96-424, released October 31, 1996.

² AT&T Petition for Reconsideration at 13.

³ SDN Users Association, Inc. Petition for Reconsideration.

and international components is an unnecessary burden to the negotiation of telecommunications service agreements.

While API agrees with AT&T's general assessment of the problems engendered by the continued detariffing of bundled international offerings, it opposes AT&T's suggested solutions. AT&T's principal recommendation is that the Commission extend its nine-month transition period to customer-specific service agreements containing both international and domestic services. During this period, a permissive detariffing rule would be in effect; parties would have the "option of using a single instrument, either a contract or a tariff, for their entire agreement."⁴ API strongly supports a rule which would allow for one fully detariffed and integrated agreement for telecommunications services. API, however, disagrees with the AT&T's contention that permissive detariffing, even for a nine-month transition period, is appropriate or warranted.

Even as an "interim" solution, permissive detariffing is not in the public interest. The essence of the Detariffing Order is that for a number of reasons the Commission found that tariffs are inimical to the public interest. An interim permissive policy reinstates the inordinate discretion accorded carriers in a tariffed environment. AT&T's proposed safeguard of requiring joint

⁴ AT&T Petition for Reconsideration at 15.

approval by carriers and customers for tariff amendments is noteworthy only for being proposed after thousands of service agreements have been negotiated. For multiyear service commitments, tariffs have no role or place in a competitive environment for delineating the business relationship between carriers and business customers.

The Commission should also disregard AT&T's statement that its customers are "significant[ly] confused . . . by the need for both a tariff and a contract for a single deal, and about the relationship between the two instruments that are intended to deliver an integrated network solution."⁵ This is a totally self-serving statement. Users have worked through a variety of issues with carriers far more confusing and daunting. Alleged customer confusion does not provide a basis for AT&T's interim solutions.

A related point raised by the Telecommunications Resellers Association ("TRA") is that the Commission somehow failed to consider the costs and burdens imposed on carriers by virtue of detariffing.⁶ This strains all credibility. The Commission balanced these burdens against the burdens imposed on end users in a tariffed environment. The record in this proceeding sets out detailed explanations regarding the convoluted nature of tariffs and the inability of

⁵ Id.

⁶ TRA Petition for Reconsideration at 14.

carriers' representatives to understand and explain to business customers (large and small) the applicable terms and conditions.⁷ The record is also replete with explanations of how tariffs ensure that all ambiguities and mistakes regarding the rates, terms and conditions -- resulting from incorrect or misleading representations, statements, written and oral, by carriers' sales representatives, however unintended -- are resolved in favor of the carrier.⁸ TRA's arguments suggesting that the Detariffing Order is somehow "arbitrary and capricious" for failing to consider the costs and burdens on carriers must be rejected.

As an alternative to its permissive detariffing proposal, AT&T proposes that the Commission "extend to the domestic components of mixed long-term service arrangements the nine-month transition period that is now to apply to 'mass market' domestic offerings."⁹ The practical effect of adopting this interim proposal would be to stay the Detariffing Order for the vast majority of negotiated services agreements. A large majority of these offerings include international components. Implementation of AT&T's "alternative" solution would essentially amount to an

⁷ See, e.g., API's Reply Comments, at 3-7.

⁸ See, e.g., API's Reply Comments, at 6-9.

⁹ AT&T Petition for Reconsideration at 15.

implicit grant of MCI Telecommunications Corporation's ("MCI") previously denied Motion for Stay Pending Judicial Review.¹⁰ API supports the Commission's decision to deny MCI's Motion for Stay and urges the Commission to continue its efforts to deregulate competitive sectors of telecommunications industry through detariffing.

B. The Best Solution is to Grant API's Petition for Reconsideration.

The Commission is urged to extend its mandatory detariffing requirement to the international portion of bundled customer-specific service arrangements.¹¹ International services are part and parcel of many negotiated service arrangements, and there is no rational basis for treating these services differently from domestic services. Bundled international offerings have always been integral part of negotiated service agreements. The reasons supporting the Commission's decision to detariff interstate, domestic, interexchange offerings apply equally to that of the international portion of mixed offerings. Detariffing

¹⁰ Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Order, DA 97-22, released January 6, 1997.

¹¹ Petition for Reconsideration of the American Petroleum Institute, CC Docket No. 96-61, filed December 23, 1996.

the rates, terms and conditions of the international portion of integrated services offerings will enhance competition and eliminate the possible invocation of the filed rate doctrine by nondominant interexchange carriers.

Accordingly, the Commission should grant API's Petition for Reconsideration as opposed to AT&T's.

II. The Commission Should Reject TRA's Permissive Detariffing Proposal.

TRA argues for a "permissive" detariffing policy based on its view of the legal reach of the filed rate doctrine.¹² API would urge the Commission to reject the argument on practical grounds, although it is clear that TRA's "permissive" detariffing argument assumes correctly the validity of the Commission's forbearance authority. Rather than detariff all services and the associated rates, terms and conditions, as per the Detariffing Order, TRA requests that negotiated service arrangements no longer be subject to tariffs and that carriers be relieved from charging only tariffed rates as provided in Section 203(c).¹³ Aside from a problematic implementation, TRA's request begs the question of what is the purpose of retaining tariffs. In the event TRA is urging that certain services remain subject to tariffing, it should identify those services. For

¹² TRA's Petition for Reconsideration, p.8.

¹³ Ibid.

reasons previously articulated in its Comments and Reply Comments, API urges that no multiyear or negotiated service arrangements for business customers be tariffed.

III. The Commission Should Clarify That Its Mandatory Detariffing Order Extends to the Local Access Components of the Services Provided by Interexchange Carriers.

API supports the Ad Hoc Telecommunications Users Committee's ("Ad Hoc") request that the Commission clarify whether the local access components of the services provided by interexchange carriers are subject to mandatory detariffing. Apparently, confusion has arisen as to the applicability of the Detariffing Order to local access components. API interprets the Commission's Order as a mandate to detariff the rates, terms and conditions of all interstate, domestic, interexchange services, unless specifically excluded. This inference is supported by the Commission's statement that it "find[s] that the competitive benefits of not permitting nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services . . . apply equally to all segments of the interstate, domestic, interexchange services market. Detariffing Order ¶ 63. Where the Commission was inclined to exclude certain services from mandatory detariffing, it did so expressly. Detariffing Order at ¶¶ 98 and 106. Despite the generally clear mandates of the Order,

apparently some carriers are suggesting that the Detariffing Order may not apply to the local access components of the services provided by interexchange carriers. Because local access components are an integral part of negotiated services arrangements provided by interexchange carriers, the Commission should confirm simply that access components have been detariffed.

If the Detariffing Order does not extend to local access components, API, like Ad Hoc, requests that the Commission provide a reasoned explanation for this differentiation. Just as there is little reason to establish a regulatory distinction between the domestic and international portions of customer-specific service agreements, so too is there little justification for requiring "carriers [to] segment their end-to-end domestic service offerings into interoffice and local access services and offer them under separate legal instruments . . ."¹⁴

IV. The Commission's Forbearance Authority Is Not Substantively Disputed.

AT&T and Frontier Corp. offer half-hearted statements going to the legality of the Detariffing Order. These statements do not warrant reconsideration by the Commission. No new facts or arguments are presented. It is noteworthy

¹⁴Ad Hoc Telecommunications Users Committee Petition for Reconsideration at 4.

that TRA, a carrier organization, does not dispute the Commission's authority under Section 10 to eliminate the tariffing obligations of interexchange carriers.¹⁵

V. Negotiated Services Arrangements Should Not Be Subject To The Public Disclosure Requirements.

The Commission should adopt Ad Hoc's proposal that the rates, terms and conditions for negotiated services agreements not be subject to the public disclosure obligation.¹⁶ API would add that these services should be treated differently because (1) the number of transactions is relatively limited as compared to "mass market" offerings, and (2) reliance on the competitive bidding process has been and remains extensive and widely followed in this market segment. Moreover, there is a reasonable expectation among this group of customers that the arrangement which a given organization negotiates will satisfy its unique requirements as compared to meeting the requirements of numerous organizations. See Competitive Telecommunications Ass'n v. FCC, 998, F.2d 1058, 1063 ("because each Tariff 12 package is the product of extensive negotiations between AT&T and a large customer, and each customer has different needs, the mix of services and

¹⁵ TRA's Petition for Reconsideration, p. 8.

¹⁶ Ad Hoc's Petition for Reconsideration, at 6-10.

features in each option will generally differ from one customer to another").

VI. The Commission Should Deny General Communication, Inc.'s Petition for Reconsideration or Clarification.

General Communications, Inc. ("GCI") argues that the Commission did not extend or intend to extend mandatory detariffing to AT&T/Alascom, Inc.'s ("AT&T/Alascom") provision of common carrier service.¹⁷ In support of its argument, GCI highlights specific language in the AT&T Reclassification Order pertaining to AT&T/Alascom."¹⁸ In the Detariffing Order, the Commission discussed whether the various commitments reaffirmed by AT&T in the course of the reclassification proceeding would remain in effect. Detariffing Order ¶ 101. The Commission noted that it was not releasing AT&T from its substantive commitments associated with the purchase of Alascom. Detariffing Order ¶ 109. Conversely, the Commission held that while it was retaining AT&T's reclassification commitments, "detariffing would not affect [those] commitments." Id. In short, the Commission extended mandatory detariffing to AT&T Alascom.

¹⁷ General Communication, Inc. Petition for Reconsideration at 1.

¹⁸ Motion of AT&T Corp to be Reclassified as a Non-Dominant Carrier, FCC 95-427, footnote 329, released October 23, 1996.

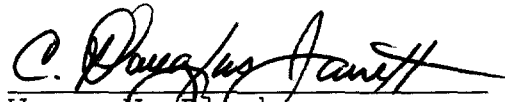
GCI's Petition for Reconsideration should be denied because its position is based on language that fails to reflect the current deregulatory objectives of the Commission. Additionally, GCI offers no reasoned justification for excluding AT&T/Alascom's interstate, domestic, interexchange service from mandatory detariffing. Without such, there is no reason for the Commission to reconsider its decision on this issue.

WHEREFORE, THE PREMISES CONSIDERED, The American Petroleum Institute respectfully reiterates its request that the Commission detariff the international portion of customer-specific service agreements, and take action otherwise consistent with the views expressed herein.

Respectfully submitted,

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Dated: January 28, 1997

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I, Cassandra L. Hall, a secretary in the law office of Keller and Heckman LLP, hereby certify that on this 28th day of January, 1997, a copy of the foregoing Statement in Opposition and Support of Petitions for Reconsideration was served by first class mail, postage pre-paid, on the following:

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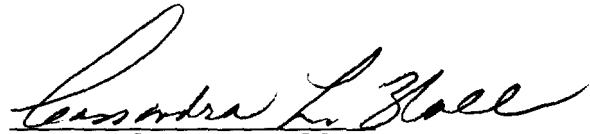
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